Abraham v Law Society of Singapore

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 866 OF 1990
RAJENDRAN J
29 APRIL 1991

Legal Profession — Disciplinary proceedings — Inquiry committee report — Right of accused solicitor to copy of report

Civil Procedure — Discovery — Pending cause or matter necessary before order can be made — Rules of the Supreme Court 1970, O 24

Words and Phrases — 'Reasonable opportunity to be heard' — Legal Profession Act (Cap 161, 1985 Ed), s 85(3)

The plaintiff is an advocate and solicitor against whom a complaint was made to the Law Society of Singapore ('the Law Society'). An inquiry committee was convened to investigate into the matter. A copy of the complaint was forwarded to the plaintiff and he was invited to give a written explanation to the inquiry committee and to appear before it. The plaintiff did both.

On 6 June 1990, the executive secretary of the Law Society informed the plaintiff that the inquiry committee was of the view that no formal investigation before the disciplinary committee was necessary but had recommended that a penalty be imposed against him for improper conduct. He was also informed that before the Law Society Council imposed a penalty on him the council wished to know whether he wished to be heard pursuant to s 85(3) of the Legal Profession Act (Cap 161, 1985 Ed) ('LPA').

The plaintiff indicated that he wished to be heard and he wrote to ask for a copy of the inquiry committee report. The executive secretary indicated that the society would not accede to the request unless directed to do so by the court, thereby necessitating this application.

The plaintiff argued that the words 'reasonable opportunity to be heard' in s 85(3) necessarily implied that the plaintiff was entitled to know what the case against him was and for this purpose he is entitled to a copy of the report.

Held, dismissing the application.

(1) To effectively have a reasonable opportunity to be heard, the plaintiff had to know what facts and other materials the council had before it.

(2) There are two aspects of natural justice, ie impartiality and fairness. By denying him access to the report, the council was being unfair.

(3) There was no cause or matter pending against the Law Society and therefore no order for discovery could be made against the Law Society. The appropriate remedy was a declaration.

Cases referred to

1 *Re A Solicitor* [1974] 3 All ER 853 (refd)
2 *Surinder Singh Kanda* v *Govt of the Federation of Malaysia* [1962] MLJ 169
3 *Norwich Pharmacal Co* v *Customs & Excise Commissioners* [1973] 2 All ER 943 (distd)

Legislation referred to

Legal Profession Act (Cap 161, 1985 Ed) ss 83, 84, 85, 87, 92
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 18(2)(m), (3)
Rules of Supreme Court 1970 O 24

R Palakrishnan for the plaintiff.
TQ Lim for the defendants.

Cur Adv Vult

Rajendran J: The plaintiff herein is an advocate and solicitor against whom a complaint was made to the Law Society of Singapore. In her complaint, the complainant made various allegations of misconduct against the plaintiff which related mainly to the manner in which the affairs of the 'House of Israel' in which the plaintiff was said to be a member was conducted. One of these allegations was that the plaintiff had asked her to sign certain documents in connection with the purchase of No 577 Sembawang Road, Singapore in the joint names of the complainant and the plaintiff without giving her an opportunity to read the documents.

The council of the Law Society referred the complaint to the chairman of the inquiry panel who, as required by the Legal Profession Act (Cap 161, 1985 Ed) ('the Act'), constituted an inquiry committee to inquire into the matter. By a notice dated 20 February 1990, the chairman of the inquiry committee forwarded the complaint to the plaintiff and invited him to give the inquiry committee any written explanation which he may wish to offer and to advise the inquiry committee whether he wished to be heard in which event the plaintiff was invited to appear before the committee at its hearing.

The plaintiff submitted a 47-page explanation supported by many documents in which he denied all the allegations of impropriety made in the complaint. The plaintiff also appeared before the inquiry committee. It appears from the affidavit of the plaintiff filed herein that when the plaintiff appeared before the inquiry committee, the plaintiff and his counsel were asked by the committee to address them only on the question of the purchase of No 577, Sembawang Road and that the committee looked into the case of *Re A Solicitor*[1] in some detail. The plaintiff and his counsel accordingly confined themselves to issues concerning the purchase of the said house. At a subsequent hearing of the committee, counsel for the plaintiff tendered to the committee a lengthy written submission on the need for independent legal advice, particularly in domestic-type situation.

The inquiry committee forwarded its report to the council on 16 May 1990. Counsel for the plaintiff, under cover of his letter to the executive secretary of the Law Society dated 1 June 1990, enclosed a copy of the written submission. In the letter, counsel informed the executive secretary that the inquiry committee had only

concerned itself on the need for the complainant to have been independently advised in the purchase of the property and that he was enclosing the written submission because that issue was somewhat novel and he did not know if, in its report, the inquiry committee had included the written submission.

By letter dated 6 June 1990, the executive secretary of the Law Society informed the plaintiff that the complaint against him had been investigated by the inquiry committee who was of the view that no formal investigation by a disciplinary committee was necessary but had recommended that a penalty be imposed against him for his improper conduct in —

(a) failing to advise the complainant to seek independent legal advice before obtaining her agreement to have the property transferred to the complainant and himself; and
(b) engaging his then partner to advise the complainant and act for her in the mortgage and purchase when what was required was legal advice from an entirely independent source.

The letter went on to say that the council had made its determination under s 84(1)(b) and that before the council imposes a penalty on him, the council wanted to know whether he wished to be heard pursuant to s 85(3) of the Act.

The plaintiff, through his solicitors, informed the council by letter dated 9 June 1990 that he wished to be heard. Subsequently, by letter dated 15 June 1990, his solicitors asked the executive secretary of the Law Society for a copy of the report of the inquiry committee. In a brief response, the executive secretary replied that the society would not be able to accede to the request 'unless it is on the directions of the court'. The plaintiff thereupon instituted the present proceedings in which he asks for an order that the defendants furnish to him a copy of the said report.

Under s 83(7) of the Act, the inquiry committee is obliged in its report to deal, inter alia, with the following matters:

(1) the necessity or otherwise of a formal investigation by a disciplinary committee; and
(2) if in the view of the inquiry committee no formal investigation by a disciplinary committee is necessary, the inquiry committee is required to recommend —
    (a) a penalty sufficient and appropriate to the misconduct committed, or
    (b) that the complaint be dismissed.

The council is by s 84(1) of the Act obliged to consider the report within one month of the receipt of the report. Upon consideration of the report the council may adopt one of the following courses:

(a) Refer the matter back to the inquiry committee or adjourn for consideration [s 84(1)(d)].
(b) If in its report the inquiry committee recommends that there should be a formal investigation by a disciplinary committee, the council is obliged to apply forthwith to the Chief Justice to appoint a disciplinary committee to hear and investigate the matter (s 86).
(c) If in its report, the inquiry committee recommends that a formal investigation is not necessary (and whether it recommends the dismissal of the complaint or the imposition of a penalty), the council may disagree with the recommendation and request the Chief Justice to appoint a disciplinary committee [s 84(2)(b)].
(d) If in its report, the inquiry committee recommends that a formal investigation is not necessary and recommends that the complaint be dismissed, the council if it accepts the recommendation, may determine that a formal investigation is not necessary [s 84(1)(a)].
(e) If in its report, the inquiry committee recommends that a formal investigation is not necessary and recommends a penalty for the misconduct committed, the council, if it accepts the recommendation that a formal investigation is not necessary may determine that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under s 85 [s 84(1)(b)].

Section 85(3) provides that before the council makes an order for the payment of a penalty, it shall notify the advocate and solicitor concerned of its intention so to do and give him *a reasonable opportunity to be heard* by the council.

In the present case, the council having considered the report of the inquiry committee made a determination under s 84(1)(b) that no cause of sufficient gravity exists for a formal investigation but that the plaintiff should be ordered to pay a penalty under s 85 for the two items of improper conduct that the inquiry committee had found. The council had accordingly on 6 June 1990 written to the plaintiff in terms set out above.

The principal argument raised by Mr Palakrishnan, counsel for the plaintiff, in this application is that the words 'reasonable opportunity to be heard' in s 85(3) necessarily implies that the plaintiff is entitled to know what the case against him is and for this purpose he is entitled to a copy of the report made by the inquiry committee. Mr Palakrishnan submitted that in a case such as this where the imposition of a penalty would have an adverse effect on the career of a man, it is all the more important that there should be full compliance with the rules of natural justice. Mr Palakrishnan submitted that the plaintiff can adequately address the

council on the alleged misconduct only if the plaintiff knew exactly what the inquiry committee had reported to the council. As it was, the plaintiff was completely in the dark and, other than what was in the complaint sent to him, did not even know if the inquiry committee had taken further evidence from the complainant.

Mr TQ Lim, who appeared for the Law Society of Singapore, informed the court at the outset that the Law Society was opposing the application because they were in need of a ruling on whether in such cases they were at liberty to give a copy of the report of the inquiry committee to the advocate and solicitor concerned.

Mr TQ Lim submitted that there was in this case no violation of the rules of natural justice. The council having made a determination under s 84(1)(b) has, as required by s 85, given the plaintiff an opportunity to be heard before making any order for the payment of a penalty. That hearing is still pending. Mr Lim submitted that if the court granted this application, the court would be anticipating that council would at the hearing be acting unfairly. He submitted that it may well be that after hearing the plaintiff the council may decide not to impose any penalty — in which event, the plaintiff could not say that he did not get a fair hearing. Mr Lim emphasized that the two issues on which the inquiry committee had found misconduct and recommended that a penalty be imposed were very limited in nature and submitted that on the facts of this case the court cannot conclude that, unless the report of the inquiry committee was made available, there must be a failure of justice.

Mr Lim further submitted that in the event the council imposed a penalty on the plaintiff, s 92 of the Act gave the plaintiff an avenue to apply to court for a review of the decision. At the review, it was open to the plaintiff to allege that the council had failed to give him a reasonable opportunity to be heard and, in deciding on the merits of such a submission, the court would have to consider all the circumstances including the limited nature of the two issues and the manner in which the hearing before the council was in fact conducted before determining whether the council had acted fairly. Mr Lim pointed out that in none of the cases quoted by Mr Palakrishnan had the court intervened before the proceedings commenced. The present proceedings and the fears that the plaintiff had that he may not get a fair hearing were, in Mr Lim's submission, premature.

I do not accept that submission. Before the council can make an order for the payment of any penalty, the council is required under s 85(3) to give the advocate and solicitor concerned a reasonable opportunity to be heard. To effectively have such an opportunity, the advocate and solicitor needs to know what facts and other material the council has before it. In the present case the council has the complaint and the report of the inquiry committee. The plaintiff has a copy of the complaint but, save for the fact that by the letter dated 6 June 1990 the plaintiff has been informed by the council that the inquiry committee had recommended that a penalty be imposed on him for the two items of improper conduct alleged therein, the plaintiff does not have any idea what the contents of the report are.

In the case of *Surinder Singh Kanda* v *Govt of the Federation of Malaya*,[2] the report of a board of inquiry that looked into allegations of misconduct against Insp Kanda was sent to the adjudicating officer before he sat to enquire into the charge. Inspector Kanda did not have the report and consequently had no opportunity of dealing with the contents of the report. The Court of Appeal in that case approached the matter on the basis of whether there was a real likelihood of bias on the part of the adjudicating officer as a result of having read the report and held that there was no such likelihood. The Privy Council, however, considered that such an approach was not the correct one. In the words of Lord Denning at p 172G of the report:

> The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo judex in causa sua*; and *audi alteram partem*. They have recently been put in the two words impartiality and fairness. But they are separate concepts and are governed by separate considerations. In the present case Insp Kanda complained a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.
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> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

In my view, the words of Lord Denning quoted above are opposite to the hearing that is pending before the Council of the Law Society. The plaintiff is not complaining that the council is or would be biased against him. His complaint is that in denying him access to the report of the inquiry committee, the council is being unfair to him in that the council is denying him his statutory right to a reasonable opportunity to be heard.

Mr TQ Lim's response that until the council has concluded its hearing it would be premature to say that there has been any unfairness is not, in my view, a sufficient answer to the plaintiff's complaint. To proceed with the hearing without disclosing to the plaintiff the material that the council has before it would be unfair regardless of whether in the result a penalty was or was not imposed on the plaintiff. To deny him access

to the report of the inquiry committee is to deny him the opportunity of denying or clarifying any adverse comments that there may be in the report. To that extent the plaintiff would not have been accorded a fair hearing and the Council of the Law Society would, by its conduct in refusing to let the plaintiff have access to the report, have denied the plaintiff his statutory right to a reasonable opportunity to be heard. Of course if the council, after hearing the plaintiff, decided not to impose a penalty the plaintiff would have no incentive to complain but that would not detract from the fact that the plaintiff had to meet the findings made against him by the inquiry committee without the benefit of knowing exactly what the inquiry committee had reported to the council.

Support for this view can be obtained from the judgment of Lord Denning in *Surinder Singh Kanda*'s case[2] where he says at p 173B of the report:

> It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing.

and at p 173C where Lord Denning adopts the following view expressed by Rigby J who heard the case at first instance:

> In my view, the furnishing of a copy of the findings of the board of inquiry to the adjudicating officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of justice as to entitle this court to set aside these proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal.

For the above reasons, I am of the view that the plaintiff is entitled to a copy of the report of the inquiry committee prior to his appearing before the council in exercise of the right given to him under s 85(3).

Mr TQ Lim also relied on s 84(3) of the Act to justify the council's refusal to give a copy of the report of the inquiry committee to the plaintiff. Section 84(3) reads as follows:

> The Council shall inform the advocate and solicitor and the person who made the application or complaint of the manner in which it has determined the application or complaint and in the event of the determination being that a formal investigation is unnecessary the Council shall on the request of the person furnish him with its reasons in writing.

Mr Lim submitted that there can be no doubt that the person entitled under s 84(3) to the council's reasons in writing where the council has determined that no formal investigation is necessary is limited to the person who made the complaint and does not extend to the advocate and solicitor. He further submitted that in any event the entitlement under s 84(3) is for reasons in writing for the determination of the council that a formal hearing is unnecessary and not a copy of the report of the inquiry committee.

I agree with Mr Lim that s 84(3) is limited in scope. Under s 84(3), the council is obliged to give to the person who made the complaint upon his request, its reasons in writing for the determination that a formal investigation is unnecessary. That obligation does not, in my view, in any way affect the obligation of the council under s 85(3) to give the advocate and solicitor a reasonable opportunity to be heard. In my view, the right to have copies of all documents adverse to him or that may be adverse to him that are in the possession of the council is an integral aspect of the right to be heard. Council cannot therefore rely on s 84(3) to deny the plaintiff access to a copy of the report of the inquiry committee.

A further ground on which Mr Lim relied in resisting this application was that the court had no powers to make the order of discovery prayed for. His submission in brief was that while s 18(2)(m) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) ('SCJA') gave the High Court power to order discovery, such power could under that provision and under s 18(3) be exercised only 'in accordance with any written law or Rules of Court relating to them'. He submitted that there was no written law relating to the power to order discovery and the only rules of court prescribed in respect of discovery, namely, the rules contained in O 24 of the Rules of the Supreme Court 1970, would not apply in respect of the present application since power to order discovery is available under the rules only when there was a pending cause or matter. Mr Lim submitted that since there was no cause or matter pending against the Law Society, the court had no power to make the order sought.

Mr Palakrishnan disagreed with this submission and relied on the decision of the House of Lords in *Norwich Pharmacal Co* v *Customs & Excise Commissioners*[3] as authority for the proposition that the court has a discretion to order discovery even against a party against whom there is no cause of action. That case, however, is not of much assistance since the issue here is whether in view of the provisions of s 18(2)(m) and s 18(3) of the SCJA, the power of the court to order discovery is limited in that it can be exercised only in accordance with any written law or rules of court. On this issue I accept the submission of Mr TQ Lim that as there is no cause or matter pending against the Law Society an order for discovery under O 24 cannot be made.

I am somewhat surprised that the Law Society should raise such a technical objection in this matter particularly since Mr Lim had stated that the reason why the Law Society was objecting to the application was so as to obtain a ruling on whether they were at liberty to give an advocate and solicitor against whom the council was proposing to impose a penalty under s 85 of the Act, a copy of the report of the inquiry committee. Had the plaintiff in this action sought a declaration that he was entitled to a copy of the report of the inquiry committee, I would have granted the declaration. The plaintiff, however, has only sought an order for discovery. Having accepted the submission of Mr Lim that in the present case the court has no power to order discovery, I have to dismiss the application made herein. There will, however, in the circumstances of this case be no order as to costs.

Application dismissed.

Solicitors: *Palakrishnan & Partners*; *TQ Lim & Co.*

Reported by *S Surenthiraraj*

Lee Choon Peng & Anor v Lamco Building Pte Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 219 OF 1991
CHUA J
26 APRIL 1991

Land Law — Caveat — Removal — Defendants had paid $250,000 earnest money pending the execution of a sale and purchase agreement — Negotiations conducted on the premise that the plaintiffs were to sell the property to a company in which the plaintiffs were directors and the defendants were then to purchase the property from the company — Sale and purchase agreement aborted — Caveat lodged by defendants — Whether defendants had an interest in the property sufficient to support the caveat

The plaintiffs were the legal and beneficial owners of a piece of land ('the property'). The defendants began negotiations with the plaintiffs to purchase the property, but subsequently, the negotiations were conducted on the premise that a company known as Grand Harvest Development Pte Ltd ('Grand Harvest') would purchase the property from the plaintiffs and then sell the property to the defendants. The plaintiffs were also directors of Grand Harvest. The defendants paid a non-refundable deposit of $250,000 as earnest money pending the signing of the sale and purchase agreement of the property. It was agreed that the earnest money would be forfeited if the sale and purchase agreement between Grand Harvest and the defendants was not executed by 16 November 1990.

The sale and purchase agreement was not executed. On 7 December 1990 and unknown to the plaintiffs, the defendants lodged a caveat against the property claiming an interest as purchasers of the property by virtue of the deposit paid to the plaintiffs for the purchase of the property.

The plaintiffs brought the present application for the cancellation or removal of the caveat lodged by the defendants against the plaintiffs' property. The issue was whether the defendants had an interest in the property sufficient to support the caveat.

Held, allowing the plaintiffs' application:

The last draft sale and purchase agreement showed that the intention was for the plaintiffs to convey the property to Grand Harvest and then for Grand Harvest (who were property developers) to develop the property for the defendants and then sell the property redeveloped to the defendants. There could be no doubt that the negotiations that took place were between the defendants and Grand Harvest. There was also no dispute that the sale and purchase agreement was aborted, and the defendants were not seeking specific performance of the sale and purchase of the property. The defendants' only claim was for the return of the earnest money of $250,000 paid to Grand Harvest and any dispute over the $250,000 was between the defendants and Grand Harvest. The defendants, therefore, did not have any interest in the property owned by the plaintiffs to entitle them to lodge the caveat.

Case referred to
1 *Re Hitchcock* (1900) 17 WN (NSW) 6

Legislation referred to
Civil Law Act (Cap 43, 1988 Ed) s 5
Registration of Deeds Act (Cap 269, 1989 Ed) s 8(1)(b)
Law of Property Act 1925 [UK] s 40(1)

Foo Soon Yien for the plaintiffs.
Patrick Yap for the defendants.

Cur Adv Vult

Chua J: This is an application by the plaintiffs for the following orders:

1 That the caveat entered on Volume 2501 No 16 of the register kept at the Registry of Deeds lodged by the defendants on 7 December 1990 against the plaintiffs' property situated at and known as 1 and 1A Keong Saik Road, Singapore and marked on the Government Resurvey Map as Town Subdivision 5 Lot 51-398, 51-425 and 51-426 and the plaintiffs' property situate at and known as 124 Neil Road, Singapore marked on the Government Resurvey Map Town Subdivision 5 Lot 51-19 be cancelled or removed from the said register.

2 That the defendants do pay the plaintiffs damages or loss occasioned by the defendants' wrongful retention of the said caveat.

At all material times, the plaintiffs were and are the legal and beneficial owners of the land and premises known as Nos 1 and 1A Keong Saik Road and No 124 Neil Road, Singapore hereinafter referred to as ('the property').

Sometime in late 1989 or early 1990, the defendants began negotiations with the plaintiffs directly and through their respective solicitors for the purchase of the property.